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REMARKS

Claims 1-14, 19-25, and 27-32 are pending in the subject application, with claims 1-14, and 19-25 withdrawn from consideration. Applicants have herein amended claims 1, 19, 27-28, 31-21, added new claim 33, and cancelled claim 29 without disclaimer or prejudice as to applicants' right to pursue the subject matter of this claim in the future.

Support for the amendments to the claims can be found in the specification as filed at, *inter alia*, page 1, lines 6-14, page 13, line 12 to page 14, line 2, and examples 2-10. Accordingly, this Amendment introduces no new matter.

Election/Restriction

The Examiner has withdrawn claims 1-14 and 19-25 from further consideration pursuant to 37 C.F.R. §1.142(b) as being drawn to a non-elected invention, there being no allowable generic or linking claim.

The Examiner asserted that the claims lack unity of invention because the technical feature common to all claims is the Bordeaux mixture of claim 27. The Examiner asserted that U.S. Patent No. 5,958,438 (Courtade et al.) teaches a composition comprising brochantite and/or antlerite in a Bordeaux mixture in combination with at least one synthetic fungicide wherein the copper content is between 15-17 wt.% (Examples 5,7, 8, and 11), which anticipates instant claim 28. The Examiner concluded that the feature common to all of the claims is not a special technical feature and made the restriction requirement final.

Applicants' Response

In response, applicants submit that the compositions recited by the claims as amended herein are not taught by the prior art. Thus, the claims as amended hereinabove do not lack unity of invention under PCT Rule 13.1 and 37 C.F.R. §1.475. 37 C.F.R. §1.475(b) states, in

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part, that "[a]n international or a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories...(3) A product, a process specially adapted for the manufacture of the said product, and a use of the said product..."

Accordingly, applicants respectfully request that the Examiner reconsider and withdraw the restriction requirement.

Claims Rejected Under 35 U.S.C. §102(b)

On page 4 of the October 28, 2010 Office Action, the Examiner rejected claims 28 and 30 as anticipated by Courtade et al. (U.S. Patent No. 5,958,438).

The Examiner asserted that Courtade et al. disclose a Bordeaux mixture in the form of an aqueous suspension or dry mixture in which virtually all of the copper is in the form of brochantite (Abstract; column 2, lines 25-31). The Examiner further asserted that Courtade et al. disclose a combination of their Bordeaux mixture with at least one synthetic fungicide, such as mancozebe, zinebe, folpel, manebe, and cymoxanil (column 2, lines 32-52). The Examiner further asserted that Courtade et al. disclose examples of their Bordeaux mixture in combination with synthetic fungicides wherein the copper content is 15-17 wt% (Examples 5, 7, 8, and 11). The Examiner concluded that Courtade et al. disclose a cupric fungicidal composition comprising a Bordeaux mixture comprising brochantite and a synthetic fungicide, wherein the copper content is 15-17 wt%, thus anticipating claims 28 and 30.

Applicants' Response

In response, without conceding the correctness of the Examiner's position and for the purpose of expediting prosecution, applicants have herein amended claim 28 to recite the limitation of claim 29, which was not rejected under 35 U.S.C. §102(b). Accordingly,

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applicants respectfully request that the Examiner reconsider and withdraw this rejection.

Claims Rejected Under 35 U.S.C. §103(a)

On pages 4-7 of the October 28, 2010 Office Action, the Examiner rejected claims 27-32 as unpatentable over Ferrier et al. (U.S. Patent No. 6,562,757).

The Examiner asserted that Ferrier et al. teach a Bordeaux mixture comprising brochantite and gypsum and containing 26.5% copper which is obtained by reacting copper sulfate with calcium hydroxide at 50 degrees Celsius followed by drying, wherein the Bordeaux mixture is then formulated into a wettable powder (Examples 3-5). The Examiner asserted that Ferrier et al. also teach copper hydroxide and calcium citrate formulated into a wettable powder comprising 40 wt% copper (Example 6). The Examiner further asserted that Ferrier et al. teach addition of a synthetic fungicide to copper containing plant protection compositions (column 4, lines 11-34; and claim 16).

The Examiner acknowledged that Ferrier et al. do not teach a composition comprising a Bordeaux mixture comprising brochantite and/or antlerite, wherein the composition comprises 30-45 wt% copper.

The Examiner then asserted that Ferrier et al. teach Bordeaux mixtures (26 wt% copper), copper hydroxide formulations (62 wt% copper) and copper oxychloride formulations (57 wt% copper) that result in differing amounts of soluble copper over time (Example 9). The Examiner further asserted that Ferrier et al. teach the desire to obtain gradual release of copper from cupric fungicidal compositions. The Examiner concluded that it would have been *prima facie* obvious to combine the Bordeaux mixture of Ferrier et al. with copper hydroxide and/or copper oxychloride formulations in order to obtain differing rates of release of the fungicidal copper because it is generally *prima facie* obvious to use in combination two or more ingredients that have previously been used separately for the

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same purpose to form a third composition useful for that same purpose.

Applicants' Response

In response, without conceding the correctness of the Examiner's position and for the purpose of expediting prosecution, applicants have amended the claims to more clearly recite their invention.

Amended claim 27, and those depending from claim 27, are not rendered obvious by Ferrier et al. because combining the Bordeaux mixture disclosed in examples 3 to 5 of Ferrier et al. with the copper hydroxide and/or copper oxychloride formulations of example 9 of Ferrier et al. does not produce a hydroxosulfates mixture having a total copper content between 30% and 45% by weight, wherein the copper content of the mixture attributable to brochantite and antlerite is between 30% and 45% by weight. Adding copper hydroxide and/or copper oxychloride to a Bordeaux mixture containing 26.5% copper cannot increase the total copper content by weight attributable to brochantite and antlerite.

Accordingly, claims 27-32 are not obvious over Ferrier et al., and applicants respectfully request reconsideration and withdrawal of this rejection.

Claims Rejected Under 35 U.S.C. §103(a)

On pages 7-8 of the October 28, 2010 Office Action, the Examiner rejected claims 27-32 as unpatentable over Barker et al. (U.S. Patent No. 3,725,535) in view of Courtade et al. (U.S. Patent No. 5,958,438).

The Examiner asserted that Barker teaches preparation of tribasic copper sulfate by adding cuprous oxide to $\text{CuSO}_4 \cdot 5\text{H}_2\text{O}$ and aerating the suspension for 1 hour at room temperature, wherein the precipitate of tribasic copper sulfate comprises 56.4% by weight cupric ion (Example III). The Examiner further asserted that Barker further

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teaches that the copper chemicals are suitable for use as fungicides.

The Examiner acknowledged that Barker does not disclose including the tribasic copper sulfate in a wettable powder formulation, wherein the copper content of the wettable powder is between 30 and 45 wt.%.

The Examiner further asserted that Courtade et al. teach wettable powder compositions comprising 45.5-75.5 wt% dry Bordeaux mixture in combination with synthetic fungicides, dispersing agents, wetting agents, anti-foaming agents, dyes, and kaolin (Examples 3-5). The Examiner further asserted that it would have been *prima facie* obvious to formulate the tribasic copper sulfate of Barker into wettable powders for application as a plant fungicide, wherein the wettable powders are prepared according to Courtade et al. with the tribasic copper sulfate of Barker substituted in the place of the dry Bordeaux mixture of Courtade et al.

Applicants' Response

In response, applicants traverse. Applicants' claimed invention is not rendered obvious by the combination of Barker and Courtade et al. because substitution of the tribasic copper sulfate of Barker for the dry Bordeaux mixture of Courtade et al. does not result in the compositions recited by the amended claims.

Specifically, Barker discloses that "tribasic copper sulfate, a fungicide, can be prepared by aerating a suspension of cuprous oxide in an aqueous solution of copper sulfate." Barker, abstract. However, tribasic copper sulfate cannot be equated with brochantite because brochantite is a specific form of tribasic copper sulfate, i.e. "tribasic copper sulfate" is a genus, and "brochantite" is a species of the genus. There is no teaching in Barker that the tribasic copper sulfate is in the form of brochantite.

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Thus, simply substituting the tribasic copper sulfate of Barker with the Bordeaux mixture of Courtade et al. will not result in compositions of applicants' claimed invention which recite "brochantite" and not "tribasic copper sulfate." Accordingly, the combination of Barker and Courtade et al. does not render applicants' claimed invention obvious.

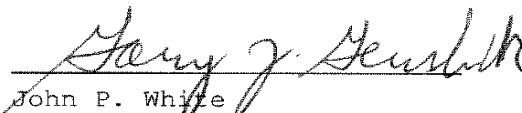
Accordingly, applicants respectfully request that the Examiner reconsider and withdraw this rejection.

If a telephone interview would be of assistance in advancing prosecution of the subject application, applicants' undersigned attorney invites the Examiner to telephone him at the number provided below.

No fee, other than the fee of \$1,110.00 for a three-month extension of time, is deemed necessary in connection with the filing of this Amendment. If any additional fee is required, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 03-3125.

Respectfully submitted,

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I hereby certify that this correspondence is being transmitted via the Electronic Filing System (EFS) to the U.S. Patent and Trademark Office on <u>April 28, 2011</u> .	
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